

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

MICHAEL MCGEE,

Petitioner,

v.

Case No. 06-C-1151

BYRAN BARTOW,

Respondent.

ORDER GRANTING CERTIFICATE OF APPEALABILITY

Petitioner's § 2254 case was dismissed, and he now wishes to appeal. Before a habeas petitioner may take an appeal to the Seventh Circuit, I must consider whether to grant him a certificate of appealability ("COA"). 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b). The certificate of appealability may issue only if the applicant makes a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2). To do so, the appellant must demonstrate that reasonable jurists could debate whether his habeas petition should have been resolved in a different manner or that the issue presented was adequate to deserve encouragement to proceed further. *See Slack v. McDaniel*, 529 U.S. 473, 483-84 (2000).

McGee, a Chapter 980 inmate, raised a single issue in his habeas petition, which is that his diagnosis for personality disorder does not qualify under the Supreme Court's due process requirements for involuntary incarceration. In essence, he believes the State of Wisconsin manufactured a bogus diagnosis, unrecognized outside of the state's own corridors, in order to keep him locked up. Although I dismissed his petition and rejected his habeas challenge, McGee's claim

is not fantastical; in fact, he cites a favorable law review article that makes similar conclusions. *See Zander, Thomas, Civil Commitment Without Psychosis: The Law's Reliance on the Weakest Links in Psychodiagnosis*, Journal of Sexual Offender Civil Commitment: Science and the Law, 1, 17-82 (2005) (available at <http://www.soccjournal.org>). Accordingly, because the issue McGee raises is at least debatable by reasonable jurists, I conclude a COA should issue.

McGee also seeks leave to appeal *in forma pauperis*; because I conclude that the appeal is not taken in bad faith, the request will be granted. 28 U.S.C. § 1915(a)(3). Accordingly, the request to proceed *in forma pauperis* on appeal is **GRANTED**. A certificate of appealability is **GRANTED** on the issue of whether McGee's commitment satisfied due process.

SO ORDERED this 14th day of September, 2007.

s/ William C. Griesbach
William C. Griesbach
United States District Judge